

ITEL

September 5, 1986

Itel Rail Corporation

55 Francisco Street
San Francisco, California 94133
(415) 984-4000

Honorable Noreta R. McGee, Secretary
Interstate Commerce Commission
Washington, DC 20423

RECORDATION NO. 8233 Filed & Recorded

SEP 30 1986 2:50 PM

INTERSTATE COMMERCE COMMISSION

Re: **Third Amendment and Supplement dated July 1, 1986 to Conditional Sale Agreement
Between Birmingham Trust National Bank and Itel Corporation, Rail Division**

Dear Ms. McGee:

On behalf of Itel Rail Corporation, the above instrument, in four (4) counterparts, is hereby submitted for filing and recording pursuant to 49 USC §11303(a), along with a check in the amount of \$10 covering the recordation fee.

Please record this instrument under the Conditional Sale Agreement, dated March 5, 1976, between Itel Corporation, Rail Division, and FMC Corporation, which was filed with the ICC on March 9, 1976 and given Recordation No. 8233.

The names and addresses of the parties to the aforementioned instrument are listed below:

Itel Rail Corporation (Successor to Itel Corporation, Rail Division, and SSI Rail Corporation)
55 Francisco Street
San Francisco, California 94133

SouthTrust Bank of Alabama, N.A. (Successor to Birmingham Trust National Bank, N.A.)
P.O. Box 2554
Birmingham, Alabama 35290

The equipment affected by this Amendment and Supplement are one hundred (100) 50'6", 70-ton, Plate B, XM boxcars bearing reporting marks ~~VTR~~ V650-699 and VTR 4050-4099.
G-MRC

Once filed, please return to the bearer the stamped counterparts not required for filing purposes together with the fee receipt and a letter from the ICC acknowledging this filing.

Very truly yours,

Josie Villaflores
Legal Assistant

JV:ps
Enclosures

6-273A013

No.

Date SEP 29 1986

Fee \$ 10.00

ICC Washington, D.C.

100 OFFICE OF
THE SECRETARY
SEP 30 2 40 PM '86
MOTOR OPERATING UNIT

This is under 8233 but don't know what letter.

[Handwritten signature: Josie Villaflores]

8233 -

**THIRD AMENDMENT AND SUPPLEMENT ("THIRD AMENDMENT"),
DATED AS OF JULY 1, 1986,
TO CONDITIONAL SALE AGREEMENT
BETWEEN SOUTHTRUST BANK OF ALABAMA, N.A., ("BANK")
AS SUCCESSOR TO BIRMINGHAM TRUST NATIONAL BANK, N.A.,
("BIRMINGHAM TRUST"), AND ITEL RAIL CORPORATION ("RAILROAD"),
AS SUCCESSOR IN INTEREST TO ITEL CORPORATION, RAIL DIVISION,
AND TO SSI RAIL CORP.**

RECORDATION NO. 8233-F Filed & Recorded

R E C I T A L S

SEP 30 1986 2-50 PM

A. FMC Corporation ("FMC") and SSI Rail Corp. ("SSI") entered into a Conditional Sale Agreement made as of March 5, 1976, filed and recorded with the Interstate Commerce Commission under Recordation No. 8233 on March 9, 1976, as amended and supplemented by a First Amendment and Supplement made as of March 25, 1976 between FMC and SSI, filed and recorded with the Interstate Commerce Commission under Recordation No. 8233-A on March 30, 1976, and further amended and supplemented by a Second Amendment and Supplement to Conditional Sale Agreement and Termination of Guaranty (the "Second Amendment") made as of May 1, 1982, between Birmingham Trust and Itel Corporation, approved by the Bankruptcy Court (as hereinafter defined) by order dated July 30, 1982, and filed and recorded with the Interstate Commerce Commission under Recordation No. 8233-D on September 28, 1983 (as so amended and supplemented and as amended and supplemented herein, the "Conditional Sale Agreement" or "CSA"), providing for the construction, sale and delivery by FMC and purchase by SSI of one hundred (100) fifty-foot, six-inch (50'6"), seventy-ton capacity, general service, single sheath boxcars, originally numbered GMRC 0650 through and including GMRC 0699 and VTR 4050 through and including VTR 4099; one boxcar has been destroyed and there are ninety-nine (99) boxcars currently subject to the CSA, all bearing QC reporting marks (the "Equipment");

B. FMC and Birmingham Trust entered into an Agreement and Assignment made as of March 25, 1976, filed and recorded with the Interstate Commerce Commission under Recordation No. 8233-B on March 30, 1976 (the "Assignment"), pursuant to which FMC sold, assigned, transferred and set over onto Birmingham Trust all its right, title and interest in and to the Equipment and Conditional Sale Agreement;

C. Itel Corporation, pursuant to a Guaranty Agreement dated as of March 25, 1976 (the "Guaranty"), unconditionally guaranteed and promised to Birmingham Trust the full

and prompt payment of all sums provided to be paid by SSI under the Conditional Sale Agreement, and the full and prompt performance and observance of all the covenants to be performed and observed by SSI under the Conditional Sale Agreement;

D. The Second Amendment, among other things, terminated the Guaranty and released Itel Corporation from all claims, obligations and liabilities under or relating to the Guaranty;

E. Itel Corporation was the successor by merger to SSI and was Debtor and Debtor in Possession in the case under Chapter 11 of the Bankruptcy Code known as In re Itel Corporation, Debtor, Case No. 3-81-00111, in the United States Bankruptcy Court, Northern District of California (the "Bankruptcy Court");

F. The Bankruptcy Court approved Itel Corporation's Amended Plan of Reorganization (the "Amended Plan") which provided, among other things, that all the rights, obligations and liabilities of the Rail Division of Itel Corporation were transferred to and assumed by Railroad, a wholly-owned subsidiary of Itel Corporation;

G. Pursuant to the Amended Plan and to an order of the Bankruptcy Court, the CSA, as amended and supplemented by the Second Amendment, was assumed by Itel Corporation and assigned to Railroad, effective as of September 19, 1983;

H. Effective December 1, 1982, following approval by the Comptroller of the Currency, Birmingham Trust National Bank changed its name to Southtrust Bank of Alabama, National Association;

I. Railroad and the Bank have agreed to amend and further supplement the CSA upon the terms and conditions set forth herein;

NOW, WHEREFOR, in consideration of the premises and mutual covenants hereinafter set forth, Bank and Itel Rail hereby agree as follows:

1. All capitalized terms used herein, if not defined herein, shall have the meanings assigned to them in the CSA. All section numbers used herein shall refer to the respective section number in the CSA, unless otherwise stated herein.

2. Subsections (b) and (d) of Section 3, and Exhibit A to subsection 3(d), are hereby deleted in their entirety. In lieu thereof, new subsections (b) and (d) of Section 3 are hereby substituted to read in full as follows:

(b) The balance of the principal amount of Remaining Conditional Sale Indebtedness is deemed to be One Million, Seven Hundred Seventy-Two Thousand, Nine Hundred Ninety-Seven Dollars and Fifty-Four Cents (\$1,772,997.54) as of July 1, 1986. The Remaining Conditional Sale Indebtedness, including all interest due thereon, shall be paid in quarterly installments as follows: Seventy-Two Thousand, Two Hundred Two Dollars and Sixty-Five Cents (\$72,202.65) shall be paid on the first day of each April, July, October and January, beginning with July 1, 1986, through and including January 1, 1995 (a total of 35 quarterly payments); the sum of Six Thousand, Two Hundred Sixteen Dollars and Fifty-Five Cents (\$6,216.55) shall be paid on April 1, 1995.

(d) For purposes of determining the principal amount of Remaining Conditional Sale Indebtedness remaining unpaid in the event Railroad opts to make a prepayment of principal at any time, and for all purposes other than determining the principal amount of Remaining Conditional Sale Indebtedness remaining unpaid in the event of subsequent default by Railroad, the interest rate on the Remaining Conditional Sale Indebtedness shall be 8.50% and the amortization of Remaining Conditional Sale Indebtedness (assuming no casualties to Boxcars or prepayments) shall be as set forth on Exhibit A-1 attached hereto.

Exhibit A is hereby deleted in its entirety and Exhibit A-1, attached hereto, is substituted in lieu thereof.


3. Section 18, entitled "Casualty Occurrence and Prepayment," is hereby amended by deleting the phrase "Exhibit B" wherever it appears and substituting in lieu thereof "Exhibit B-1" and by deleting Exhibit B in its entirety and substituting Exhibit B-1, attached hereto, in lieu thereof, and by the addition of the following:

"Railroad may, at its option, at any time and from time to time, prepay any or all of the unpaid balance of the

principal amount of Remaining Conditional Sale Indebtedness, plus accrued interest thereon to the prepayment date. In the case of prepayment of less than the entire unpaid balance of the principal amount of Remaining Conditional Sale Indebtedness, the amount so prepaid shall be applied to reduce the unpaid balance of the principal amount of Remaining Conditional Sale Indebtedness."

4. This Third Amendment shall be effective only upon the completion, on or before December 31, 1986, of a restructuring transaction (the "ETC Exchange Transaction") with respect to all or a substantial part of the secured debt of Itel Rail that is governed by the Consolidated, Amended, and Restated Equipment Trust Agreement ("ETA") dated as of January 1, 1982, between First Security Bank of Utah, N.A., as Trustee, Itel Corporation and Itel Rail Corporation that results in a reduction or elimination of Railroad's obligations under the ETA; provided, however, that the waiver contained in Section 5 hereinbelow shall be effective upon the date of execution of this Third Amendment. If the ETC Exchange Transaction has not been completed by December 31, 1986, the waiver contained in Section 5 hereinbelow shall be null and void as of February 1, 1987, and Railroad shall have until February 1, 1987 to cure any defaults or events of default that might otherwise exist under the CSA. If the ETC Exchange Transaction has been completed by December 31, 1986, this Third Amendment shall be effective as of July 1, 1986.
5. Bank hereby waives any defaults and events of default existing or that will exist under the CSA due to failure to pay in full any installment of the Remaining Conditional Sale Indebtedness or the interest thereon or any other sum payable by Railroad under the CSA up to and including July 31, 1986, and any defaults or events of default that might otherwise exist under the CSA due to Railroad's payment of sums due Bank according to Sections 2 and 3 hereinabove rather than according to the CSA without giving effect to this Third Amendment, from July 1, 1986, through and including February 1, 1987.

SOUTHTRUST BANK OF ALABAMA, N.A. ITEL RAIL CORPORATION

By 
Title VP
Date 8-14-86


By 
Title President
Date 9/4/86

EXHIBIT B-1

PROG: BIRMCAS
12-Aug-86

BIRMINGHAM TRUST
CASUALTY VALUES

CSA INDEBTEDNESS
PAYMENT DATE

CASUALTY VALUE AS
PERCENTAGE OF ORIGINAL
CSA INDEBTEDNESS

4 /01/86	75.497%
7 /01/86	74.027%
10 /01/86	72.525%
1 /01/87	70.992%
4 /01/87	69.426%
7 /01/87	67.827%
10 /01/87	66.194%
1 /01/88	64.526%
4 /01/88	62.823%
7 /01/88	61.083%
10 /01/88	59.307%
1 /01/89	57.492%
4 /01/89	55.640%
7 /01/89	53.747%
10 /01/89	51.815%
1 /01/90	49.842%
4 /01/90	47.826%
7 /01/90	45.768%
10 /01/90	43.666%
1 /01/91	41.519%
4 /01/91	39.327%
7 /01/91	37.088%
10 /01/91	34.802%
1 /01/92	32.467%
4 /01/92	30.083%
7 /01/92	27.647%
10 /01/92	25.160%
1 /01/93	22.620%
4 /01/93	20.027%
7 /01/93	17.378%
10 /01/93	14.672%
1 /01/94	11.910%
4 /01/94	9.088%
7 /01/94	6.207%
10 /01/94	3.264%
1 /01/95	0.259%
4 /01/95	0.000%

STATE OF CALIFORNIA)
)
COUNTY OF SAN FRANCISCO) S.S.

On the 4th day of September, 1986 before me personally came Desmond P. Hayes to me known, who, being by me duly sworn, did depose and say that he is the President of Itel Rail Corporation, one of the parties described in and which executed the above instrument; that the execution of the above instrument was duly authorized by the board of directors of Itel Rail Corporation; and that he signed his name thereto pursuant to like authority.



Josie Villaflores
Notary Public

STATE OF Alabama)
)
COUNTY OF Jefferson) S.S.

On the 19th day of September, 1986 before me personally came John L. Cole to me known, who, being by me duly sworn, did depose and say that he is the Vice President of SouthTrust Bank of Alabama, N.A., one of the parties described in and which executed the above instrument; that the execution of the above instrument was duly authorized by the board of directors of SouthTrust Bank of Alabama, N.A.; and that he signed his name thereto pursuant to like authority.

Patricia M. Henney
Notary Public

My Commission Expires Oct. 3, 1988.